

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

PHILLIP D. STEELE

Petitioner,

vs.

DANIEL SULLIVAN, Warden of the
South Dakota State Penitentiary; and
THE ATTORNEY GENERAL OF THE
STATE OF SOUTH DAKOTA,

Respondents.

CIV 21-4171

ORDER

Petitioner Phillip D. Steele, an inmate at the South Dakota State Penitentiary in Sioux Falls, South Dakota, made application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 concerning his conviction for escape. The escape amounted to Steele not returning to state custody when he was granted a furlough to attend a funeral on the Pine Ridge Indian Reservation which is located within the boundaries of South Dakota. Steele is a member of the Oglala Tribe. No issue has been raised as to how or where Mr. Steele was arrested after he failed to return from his furlough. Respondents move to dismiss the Application on various grounds.

The Report and Recommendation recognizes that a statute of limitations is not jurisdictional. The statute of limitations for the Antiterrorism and Effective Death Penalty Act (AEDPA), applies to this claim even though the conviction was final a month before the AEDPA was effective. *Wood v. Milyard*, 566 U.S. 463, 468 (2012). No basis has been shown for equitable tolling in this case so there is no reason for an evidentiary hearing. Accordingly,

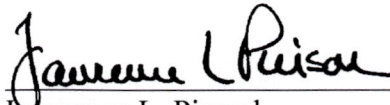
IT IS ORDERED:

1. That Petitioner's Objections, Doc. 8, are overruled.
2. That the Report and Recommendation, Doc. 7, is ADOPTED.

3. That Respondents' Motion to Dismiss, Doc. 4, is GRANTED.
4. That no certificate of appealability shall issue.
5. That Petitioner's Application for Writ of Habeas Corpus, Doc. 1, is dismissed with prejudice.

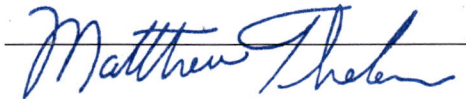
Dated this 31st day of January, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lawrence L. Piersol", written over a horizontal line.

Lawrence L. Piersol
United States District Judge

ATTEST:
MATTHEW W. THELEN, CLERK

A handwritten signature in blue ink, appearing to read "Matthew W. Thelen", written over a horizontal line.